

DUCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

PACIFIC TELECOM INC.)

File No. _____

Petition for Declaratory Ruling)
Under Section 310(b)(4))
of the Communications Act of 1934, as)
Amended, to Permit Indirect)
Foreign Ownership Exceeding 25)
Percent in Common Carrier)
Licensee GTE Pacifica Inc.)

RECEIVED

DEC - 4 2002

Federal Communications Commission
Office of the Secretary

PETITION OF PACIFIC TELECOM INC.
FOR DECLARATORY RULING UNDER SECTION 310(b)(4) OF
THE COMMUNICATIONS ACT OF 1934, AS AMENDED

Pacific Telecom Inc. ("Pacific Telecom") hereby requests a declaratory ruling that indirect foreign investment of 72.1 percent from entities having their principal place of business in (and/or from individuals who are citizens of) World Trade Organization ("WTO") Member countries, resulting from Pacific Telecom's proposed acquisition of Micronesian Telecommunications Corporation and its subsidiary (and FCC common carrier licensee) GTE Pacifica Inc., is consistent with the public interest standard under Section 310(b)(4) of the Communications Act of 1934, as amended (the Act"). Pacific Telecom further requests a ruling that future foreign ownership from entities having their principal place of business in (and/or from individuals who are citizens of) WTO member countries, up to an additional 15 percent, also would serve the public interest

I. THE PARTIES

A. Transferor Bell Atlantic New Zealand Holdings, Inc. ("BANZHI")

Verizon Communications Inc. ("Verizon") is a publicly held corporation organized under the laws of Delaware. Verizon, through a series of wholly owned subsidiaries, owns 100 percent of the outstanding common stock of Bell Atlantic New Zealand Holdings, Inc. ("BANZHI").

BANZHI is the current 100 percent shareholder of Micronesian Telecommunications Corporation ("MTC"), a corporation organized under the laws of the Commonwealth of the Northern Mariana Islands ("CNMI").¹ BANZHI is the transferor in the proposed transaction as it intends to sell to Pacific Telecom all the outstanding stock of MTC.

MTC provides local exchange access service in the CNMI. MTC also is the 100 percent owner of GTE Pacifica Inc., a separate CNMI corporation that provides domestic and international telecommunications services in the CNMI. In particular, GTE Pacifica holds one common carrier radio license for cellular radio telephone service and one common carrier satellite earth station license that are subject to Section 310(b)(4) of the Act. GTE Pacifica also holds other FCC authorizations, including international Section 214 authorizations, a domestic Section 214 authorization for interexchange service in CNMI, a cable landing license, and a non-common carrier satellite earth station license, as listed in Attachment A to this request.

B. Transferee Pacific Telecom Inc.

Pacific Telecom is a privately held corporation incorporated under the laws of the CNMI formed by a consortium of investors as the vehicle to purchase the assets of MTC and GTE

¹ CNMI is a self-governing commonwealth in political union with and under the sovereignty of the United States of America. With a few exceptions (not relevant here) arising from the transition to commonwealth status, citizens of CNMI are U.S. citizens. *See* Presidential Proclamation No. 5564, 51 Fed. Reg. 40399 (November 7, 1986) (<http://www.nara.gov/fedreg/codific/PROCS/p05564.html>).

Pacifica. Pacific Telecom has three shareholders: 30 percent of the equity *is* owned by THC Communications Corporation (“THC Communications”); **20** percent of the equity is owned by Missouri Holdings Corporation (“Missouri Holdings”); and 50 percent of the equity *is* owned by Prospector Investment Holdings Inc. (“Prospector”). Under a shareholders’ agreement, the shareholders agreed to elect to the board of directors the three nominees each of Prospector and THC Communications, respectively. The shareholders also agreed that Prospector would take the lead in managing the operations of MTC and GTE Pacifica. Each of the shareholder corporations is described below.

THC Communications is a privately held CNMI corporation that holds a 30 percent equity and voting interest in transferee Pacific Telecom. THC Communications *is* 100 percent owned by Tan Holdings Corporation, also a privately held CNMI corporation. Tan Holdings Corporation is the largest private employer and taxpayer in the CNMI, with interests in diverse industries. Tan Holdings is owned 100 percent by various Tan Family trusts, each of which was created under CNMI law and each of whose trustee is Siu Lin Tan, a CNMI/U.S. citizen. Twenty-four of the current twenty-seven beneficiaries of the trusts are CNMI/U.S. citizens, such that **93** percent of the beneficial interests in the trusts are currently attributable to U.S. citizens and 7 percent of the beneficial interests in the trusts are attributable to foreign citizens. **As** discussed in the following section, the ultimate beneficial interests of the foreign citizens in transferee Pacific Telecom are further diluted by the minority interest in Pacific Telecom of **THC** Communications, reducing the interests in Pacific Telecom of foreign beneficiaries to the Tan Family trusts to **2.1** percent.

Missouri Holdings Corporation is a privately **held** corporation incorporated under the laws of CNMI and holds a 20 percent equity interest in transferee Pacific Telecom. Missouri

Holdings has agreed to vote its shares for the directors nominated by THC Communications Missouri Holdings ~~is~~ owned 100 percent by Michael Kai Leung, a Canadian citizen. Mr. Leung holds business interests in several ventures in the Pacific region, including business interests in the CNMI and ~~an~~ 18 percent, non-controlling stake in People's Cellular, a cellular carrier in Hong Kong

Prospector holds a 50 percent equity and voting interest in transferee Pacific Telecom and, as noted above, will control operations and management of MTC and **GTE** Pacifica. Prospector is a privately held corporation incorporated under the laws of the Cayman Islands in the British West Indies. The principal business of Prospector is as an investment vehicle for holding the investment in Pacific Telecom. The common stock of Prospector ~~is~~ owned 60 percent by Ricardo C. Delgado (father) and 40 percent by Jose Ricardo Delgado (son), both of whom are citizens of the Philippines. The principal business of the Delgados is transacted through Citadel Holdings Inc., a Philippines corporation engaged primarily in the transportation and logistics businesses, owning among other things, the largest airport services company in the Philippines. Citadel founded and was the majority owner of ISLACOM, the second largest telecommunications company in the Philippines, before selling its stake in 1999.

II. PUBLIC INTEREST STATEMENT

Section 310(b)(4) of the Act states as follows:

(b) No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by ... (4) any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock ~~is~~ owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by **any** corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

In its *Foreign Participarion Order*, the Commission concluded that allowing indirect foreign investment in common carrier radio licensees beyond the 25 percent benchmark established by Section 310(b)(4) of the Act could promote competition in the U.S. market, thereby promoting the U.S. public interest.’ The Commission analyzes proposed indirect foreign investments in common carrier licensees “guided. . . by the U.S. Government’s commitment under the World Trade Organization (“WTO”) Basic Telecommunications Agreement, which seeks to promote global markets for telecommunications so that consumers may enjoy the benefits of competition.”³ In particular, the Commission found that “the public interest will be served by permitting more open investment by entities from WTO member countries in U.S. common carrier wireless licensees.”⁴ Based on this principle, the Commission has adopted a “strong presumption that no competitive concerns are raised by the indirect foreign investment” from entities from WTO member countries.⁵

The Commission uses the “principal place of business” test to determine the home market of indirect foreign investors for purposes of its analysis.⁶ In this case, Prospector Investment Holdings Inc. (the *fifty* percent equity owner of Pacific Telecom) is incorporated in the Cayman Islands of the British West Indies, a British dependent territory. The FCC previously has deferred to an opinion provided by the U.S. Department of State concluding that the 1994

² *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd 23891, 23940 (1997) (“Foreign Participation Order”).

³ *Aerial Communications, Inc. and Voicestream Wireless Holdings Corp.*, 15 FCC Rcd 10089, 10093-94 (2000).

⁴ *Foreign Participation Order*, 12 FCC Rcd at 23940.

⁵ *Voicestream Wireless Corp.*, 15 FCC Rcd 3341, 3348 (2000).

⁶ *Foreign Participation Order*, 12 FCC Rcd at 23941,

Marrakesh Agreement Establishing the World Trade Organization applies to all British Territories.⁷ Thus, the Cayman Islands is considered a WTO member country.

Because, however, Prospector is a passive investment corporation rather than an operating company, the Commission may want to look to the citizenship of Prospector's owners and their principal place of business for its home market analysis.' The Philippines also is a WTO member country. Regardless of which WTO member country is considered Prospector's principal place of business, therefore, Pacific Telecom is entitled to the presumption that foreign investment from Prospector would serve the U.S. public interest.

Twenty percent of Pacific Telecom is held by Missouri Holdings Corporation, a CNMI corporation which is owned 100 percent by Michael Kai Leung. Mr. Leung is a Canadian citizen who operates and invests in businesses in the Pacific region, including a non-controlling 18 percent interest in a wireless carrier in Hong Kong. People's Cellular. Regardless of whether CNMI, Canada, or Hong Kong is considered Mr. Leung's principal place of business, each country is a WTO Member country.

The principal place of business of THC Communications and Tan Holdings Corporation is the CNMI. Moreover, the trusts that are the shareholders of Tan Holdings Corporation are all

⁷ *Cable & Wireless USA, Inc.*, 15 FCC Rcd 3050 (2000) and n.14. (referencing Letter from Robert E. Dalton, Assistant Legal Adviser for Treaty Affairs, United States Department of State, to Rebecca Arbogast, Chief, Telecommunications Division, International Bureau, Federal Communications Commission (Feb. 16, 2000) at 1).

⁸ Addressed below are the five balancing factors for determining Prospector's "principal place of business": 1) Place of incorporation: Cayman Islands, British West Indies; 2) Nationality of investment principals, officers and directors: Ricardo C. Delgado, Philippine citizen owning 60 percent of Prospector; Jose Ricardo Delgado, Philippine citizen owning 40 percent of Prospector; 3) Country in which world headquarters of owners is located: Philippines; 4) Country in which the majority of tangible property of owners is located: Philippines; and 5) Country from which owners derive their greatest sales and revenues from operations: Philippines.

CNMI trusts; and their common trustee, Siu Lin Tan, is a U.S./CNMI citizen. A few of the beneficiaries of the trusts are non-U.S./CNMI citizens. Using the Commission's "multiplier" procedure under Section 63.09 of its rules, only 2.1 percent of the ultimate indirect ownership in Pacific Telecom is considered beneficially held by non-U.S. citizens who are beneficiaries of the trusts that control Tan Holdings Corporation: 0.75 percent attributable to Rosalina Tan, a Philippines citizen; 0.6 percent attributable to Samuel Tan, a Hong Kong citizen; and 0.75 percent attributable to Cynthia Tan, a British national overseas (Hong Kong).

III. REQUESTED RULINGS

The 72.1 percent indirect foreign investment in MTC and FCC common carrier license holder GTE Pacifica by Pacific Telecom will provide increased opportunities for better services in the CNMI. Pacific Telecom's shareholders each are controlled by individuals and entities with a strong presence in the Pacific region. In particular, the owners of the managing shareholder have significant prior experience in founding and operating a telecommunications carrier in the Philippines. Pacific Telecom proposes no reduction in services by GTE Pacifica and, in fact, proposes to increase the overall telephone penetration rates in the CNMI. Moreover, as Pacific Telecom is not currently a telecommunications carrier, the transaction would result in no increase in concentration in the relevant markets.'

For these reasons, Pacific Telecom requests a declaratory ruling pursuant to Section 310(b)(4) of the Act that the public interest does not prohibit its direct acquisition of MTC and indirect acquisition of FCC common carrier license holder GTE Pacifica, considering

⁹ Pacific Telecom is not affiliated with a former Commission licensee of similar name (Pacific Telecom, Inc.). Compare *Pacific Holdings, Inc. Transferor, and Century Telephone Enterprises, Inc. Transferee, For Consent to Transfer Control of Pacific Telecom, Inc.*, DA 91-2225, *Memorandum Opinion and Order*, 13 FCC Rcd 8891 (1997).

Pacific Telecom's current level of 72.1 percent ultimate foreign ownership from entities and individuals from WTO Member countries; (50 percent Philippine ownership through Prospector; 20 percent Canadian ownership through Missouri Holdings; and 2.1 percent Hong Kong/Philippine/United Kingdom ownership through THC Communications). Upon consummation of the transaction, therefore, CNMI/U.S. citizens and entities or individuals with home markets in WTO Member countries will ultimately hold 100 percent of the ownership interests in Pacific Telecom.

Additionally, Pacific Telecom requests additional flexibility in case the ownership interests among beneficiaries of the Tan Family trusts change such that ~~non-CNMI/U.S.~~ citizens have increased beneficial interests in the trusts [for example, if one ~~of~~ the lines of beneficiaries terminates through death, then the percentage ownership attributable to other beneficiaries, including ~~non-U.S.~~ citizens, may increase from current levels) and/or to attract new foreign investment for MTC in the future. Pacific Telecom, thus, requests that the Commission rule that an additional 15 percent foreign investment in Pacific Telecom from entities or individuals from WTO member countries, for a total of as much as **87.1** percent WTO foreign investment, would serve the public interest and would not require additional Commission authorization. Such a

ruling permitting additional future foreign investment from entities or individuals in WTO member countries is fully supported by Commission precedent.¹⁰

Respectfully submitted,

PACIFIC TELECOM MC.

/s/ Timothy J. Cooney

Kenneth D. Patrich
Timothy J. Cooney
Wilkinson Barker Knauer LLP
2300 N Street, N.W.
Suite 700
Washington, D.C. 20037
(202) 783-4141

Its Attorneys

Date: April 9, 2002

¹⁰ See FCC Public Notice in CC Docket No. 02-44, DA 02-773, April 5, 2002 (FCC approves in advance an additional investment of no more than 25 percent by any single non-U.S. investor or entity on top of 36.84 percent indirect foreign interest of citizen of Ireland, a WTO Member country); *Voice Stream Wireless Corporation or Omnipoint Corporation et al.*, 15 FCC Rcd 3341 (2000) (FCC approves up to and including 25 percent indirect foreign ownership in addition to current level of 30.6 percent foreign investment in proposed transfree); FCC Public Notices of International Authorizations Granted: 1) *Northeast Digital Networks, Inc.*, 14 FCC Rcd 6788 (1999), granting authorization for an additional future 15 percent indirect foreign ownership above the current level exceeding 25 percent; 2) *Spectrasite Holdings, Inc.*, 14 FCC Rcd 13344, granting authorization to foreign individuals to hold an additional 15 percent indirect equity interest above current 30 percent foreign indirect ownership; 3) *CNG Communications, Inc.*, 14 FCC Rcd 4996 (1999), granting authorization for additional 15 percent indirect foreign ownership above the current level exceeding 25 percent.

ATTACHMENT A

FCC Authorizations Held by The Micronesian Telecommunications Corporation and GTE Pacifica Inc.

International Section 214 Authorizations

ITC-2 14-19970502-00247; ITC-ASG- 1997I211-00776; ITC-97-779-AL ITC-97-288	214 Authorization for Facilities-Based and Resale (Switched and Private Line Non-Interconnected and Interconnected where lawful), excluding the Dominican Republic and Venezuela (GTE Pacifica)
ITC-ASG-19971211-00778; ITC-97-778-AL	214 Authorization to Construct and Operate the MTC Interisland Cable System Between the Commonwealth of the Northern Mariana Islands and Guam Granted By ITC-92-140 [8 FCC Rcd 750 (1993)] (GTE Pacifica)

Cable Landline License

SCL-92-003-AL	Cable Landing License to Land and Operate the MTC Interisland Cable System Between the Commonwealth of the Northern Mariana Islands and Guam Granted by SCL-92-003 [8 FCC Rcd 750 (1993)] (GTE Pacifica)
---------------	--

Earth Station Authorizations

SES-LIC-20000414-00563; E000164	C-band transmit/receive earth station to provide digital voice/data services (GTE Pacifica)
SES-RWL-20001006-01900; Ka-33	C-band transmit/receive earth station to provide digital voice/data services (GTE Pacifica)

Wireless Telecommunications Authorization

KNKN616	Common Carrier Radio License for Cellular Radio Telephone Service (GTE Pacifica)
---------	--

Domestic Section 214 Authorization

Blanket Authorization	Domestic Interstate 214 Authorization for CNMI and Guam Interexchange Carrier Operations (GTE Pacifica)
Blanket Authorization	Domestic Interstate 214 Authorization for CNMI Local Exchange Carrier Operations (Micronesian Telecommunications Corporation)

EXHIBIT 1

FCC Authorizations **Held** by Micronesian Telecommunications Corporation and **GTE** Pacifica Inc.

International Section 214 Authorizations

ITC-214-19970502-00247; ITC-ASG-19971211-00776; ITC-97-779-AL ITC-97-288	214 Authorization for Facilities-Based and Resale (Switched and Private Line Non-Interconnected and Interconnected where lawful), excluding the Dominican Republic and Venezuela (GTE Pacifica)
ITC-ASG-19971211-00778; ITC-97-778-AL	214 Authorization to Construct and Operate the MTC Interisland Cable System Between the Commonwealth of the Northern Mariana Islands and Guam Granted By ITC-92-140 [8 FCC Rcd 750 (1993)] (GTE Pacifica)

Cable Landing License

SCL-92-003-AL	Cable Landing License to Land and Operate the MTC Interisland Cable System Between the Commonwealth of the Northern Mariana Islands and Guam Granted by SCL-92-003 [8 FCC Rcd 750 (1993)] (GTE Pacifica)
---------------	---

Earth Station Authorizations

SES-LIC-20000414-00563; E000164	C-band transmit/receive earth station to provide digital voice/data services (GTE Pacifica)
SES-RWL-20001006-01900; Ka-34	C-band transmit/receive earth station to provide digital voice/data services (GTE Pacifica)

Wireless Telecommunications Authorization

KNKN616	Common Carrier Radio License for Cellular Radio Telephone Service (GTE Pacifica)
---------	---

Domestic Section 214 Authorization

Blanket Authorization	Domestic Interstate 214 Authorization for CNMI and Guam Inter-exchange Carrier Operations (GTE Pacifica)
Blanket Authorization	Domestic Interstate 214 Authorization for CNMI Local Exchange Carrier Operations (Micronesian Telecommunications Corporation)

EXHIBIT, ITEM 8

DESCRIPTION OF THE TRANSACTION

By this Application, Bell Atlantic New Zealand Holdings, Inc. (“BANZHI”) seeks Commission approval for an indirect transfer of control of the common carrier radio license held by GTE Pacifica Inc. (“GTE Pacifica”) to Pacific Telecom Inc. (“Pacific Telecom”).¹

Specifically, Pacific Telecom will acquire 100% of the outstanding capital stock of the current shareholder and parent company of GTE Pacifica, Micronesian Telecommunications Corporation (“MTC”), from BANZHI, the current shareholder of MTC. BANZHI is indirectly owned and controlled by Verizon Communications Inc. (“Verizon”) through a series of wholly owned subsidiaries. The proposed transaction will result in a transfer of control of MTC and, in turn, will result in an indirect transfer of control of GTE Pacifica to Pacific Telecom. Immediately following the transaction, GTE Pacifica will continue to offer the services it currently offers to its customers under existing service arrangements.

PUBLIC INTEREST STATEMENT

Consummation of the proposed transaction is in the public interest.² The purchaser’s shareholders are companies with a strong presence in the Pacific region, giving them substantial community of interest with the Commonwealth of the Northern Mariana Islands (“CNMI”), the territory served by GTE Pacifica. In particular, the principals of the transferee’s fifty percent shareholder, Prospector Investment Holdings Inc., have substantial experience in building and operating a telecommunications carrier (since divested) in the Philippines. Additionally, indirect

¹ Simultaneous with this Application, BANZHI and Pacific Telecom are filing applications to transfer control of two international 214 authorizations, a domestic 214 authorization, two earth station licenses, and a cable landing license held by GTE Pacifica, as well as a domestic 214 authorization held by Micronesian Telecommunications Corporation. A list of all licenses and authorizations being transferred is attached hereto.

² 47 U.S.C. § 310(d).

~~thirty~~ percent shareholder, Tan Holdings Corporation, is a CNMI company that is the largest private employer and taxpayer in the CNMI. This aspect of local ownership will benefit GTE Pacifica and its customers.